

C O N F I D E N T I A L SECTION 01 OF 02 ABUJA 003288

SIPDIS

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TAGS: PGOV KDEM PINS NI

SUBJECT: NIGERIA'S ELECTORAL LAW CONTROVERSY CONTINUES

REF: A. ABUJA 3228

B. ABUJA 3280

Classified by CDA Andrews. Reason: 1.5(d)

¶1. (C) Summary: President Obasanjo denies having added an unpopular clause to the Election Law, asserting that some legislators inserted the language after he had noted its absence. A senior legislator privately conceded the point, commenting that the legislators had grossly exceeded their mandate. He thought Obasanjo would have to accept deletion of the clause, but public comments suggest Nigeria's Head of State is not yet there. If Obasanjo is conciliatory, it will be good for Nigeria's nascent democracy. End Summary.

¶2. (U) Using his monthly radio program to respond to the Nigerian Senate's rejection of the law intended to govern the 2003 electoral cycle (ref A), President Obasanjo said that he had not inserted the unpopular Clause 80.1. This clause requires any party other than the three registered now (PDP, APP and AD) to prove itself at the local level before contesting state and federal positions. As other parts of the law extend the tenure of local governments from 2002 until 2003 and establish that local government elections will be held after state and national contests, Clause 80.1 denies any of the several new parties an opportunity to participate in state or national elections before 2007. The clause drew scathing public attacks from dozens of prominent Nigerians. Even within the ruling PDP, there were many with strong reservations. When it recently emerged (ref B) that Clause 80.1 had not featured in the version of the law passed by the National Assembly and sent to the President for signature, the pressure grew stronger.

¶3. (U) The Senate met in a special session on December 28 and took the position that Obasanjo had not acted on the bill sent to him December 5. Since the 1999 Constitution gives him 30 days to act, Senator Idris Abubakar pointed out during debate, all the President need do is sign the bill that originally came to him.

¶4. (U) Obasanjo December 29 publicly absolved himself of having made a line-item amendment. He said that he had simply called the attention of five members of the conference committee to the omission from the bill of a clause endorsed by the ruling PDP. The conferees had, Obasanjo continued, asked him to send a letter stating his objections. They had then adjourned to the home of Works and Housing Minister Tony Anenih, Obasanjo said, adding, "What transpired there I would not know." In the evening, the President concluded, the legislators returned with a new version of the law. It incorporated a requirement (Clause 80.1) that parties seeking to contest state or national elections must first obtain ten percent of the seats in local government councils (spread across two-thirds of the states). Obasanjo noted that this was a lower hurdle than the 15 percent threshold the PDP caucus had agreed upon, but that he signed that second version. Members of the House of Representatives December 30 argued that it was Senate President Anyim rather than Na'Abba who had inserted the controversial clause.

¶5. (C) Comment: The President may conceivably have so misunderstood constitutional requirements that he truly thought a few members of the conference committee had the authority to amend a bill after passage without submitting the change for ratification. A senior legislator privately confirmed December 29 that the President's account was basically correct and said he could not understand how the conference committee members had so grossly exceeded their mandate. Whether it was Anyim or Na'Abba or some other legislator who inserted Clause 80.1 matters little: Five legislators and some Villa officials (perhaps including the President) flouted Constitutional requirements to get the result they wanted. The kindest conclusion one might draw is that the legislators realized they had indeed forgotten to include a passage that the party in control of both houses wanted and rationalized the change as a technical fix that would be broadly acceptable. The Nigerian public may be less

generous, however, since the redrafting took place at the home of Anenih, notorious as a political fixer. Obasanjo has long disliked Na'Abba and probably relished telling his listeners that the House Speaker was among the legislators who adjourned to Anenih's house.

16. (C) Comment Continued: If the President now recognizes that the electoral law he signed is politically unviable and accepts deletion of Clause 80.1, the controversy that has bedeviled politics here for the past two weeks may prove beneficial to Nigeria's nascent democracy. A clear object lesson in the importance of proper democratic procedure will have been delivered: It does not suffice for backroom consensus to have been achieved; debate must take place in public, and individual politicians must accept accountability for their positions, not hide behind cloakroom consensus. One of the most positive elements of the Senate's special session was the Senators' decision to vote down a request for executive session, thereby leaving their deliberations open to journalists and cameras.

17. (C) Comment Continued: Obasanjo's remarks to reporters about the Senate action ("Oh, they have rejected the Act. That is their own prerogative. I am just hearing it now. You are just telling me now.") are unfortunately reminiscent of previous incidents of Executive-Legislative conflict where the President continued to advocate his position despite Constitutional questions. He has often prevailed, with other participants in the political process left licking their wounds. To paraphrase the senior legislator, Obasanjo is essential to Nigerian democracy now because there is no other person combining the (military) seniority to face down the generals and the government experience (previously Head of State) to crack the whip over unruly civilian politicians when it occasionally becomes necessary. However, the senior legislator added, Obasanjo's experience, seniority and obduracy often make him too attentive to sycophants and lead him to reject compromise, especially with people so junior to him in years and experience.

18. (C) Comment Concluded: If Obasanjo is to complete the democratic transition he began, he must gradually learn to compromise with elected politicians. This electoral law could be a test case. There is much at stake, but less than many might claim. Assuming present trends continue for another six to nine months, the PDP will dominate the 2003 election cycle. But Clause 80.1 would increase its dominance by excluding energetic new challengers in some places where the PDP ran strongly in 1999 but has since weakened. For that very reason, the deletion of Clause 80.1 would be good for the growth of democracy here, and correspondingly bad for the interests of certain incumbents. Obasanjo will need to balance his interest in satisfying them and his own innate stubbornness against the imperatives of greater political transparency, respect for process, and responsiveness to public opinion.

Andrews